

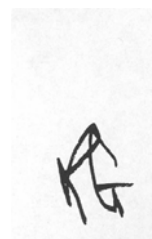
The Secretary of State presents his compliments to Their Excellencies and Messieurs and Mesdames the Chiefs of Mission and wishes to refer to the circular diplomatic notes dated April 10 and May 28, 1991 concerning the definition of the term "permanently resident in" for the purposes of Article 38(2) of the Vienna Convention on Diplomatic Relations and Article 71(2) of the Vienna Convention on Consular Relations.

The Secretary wishes to remind the Chiefs of Mission that in its note dated May 28, the Department had requested that the lists of personnel subsequently forwarded to the missions be updated and returned no later than October 15. As this deadline now has passed, the Secretary would appreciate it if the Chiefs of Mission would submit any lists still outstanding as soon as possible.

In the note dated May 28, the Department also invited the Chiefs of Mission to submit any questions which they had regarding the change in definition. In response to this invitation, the Department received a number of questions. The Department wishes to take this opportunity to provide the attached guidance.

Attachments:

As stated.



Department of State,

Washington, November 1, 1991

**STATUS OF PERSONS AFFECTED BY RE-DEFINITION
OF "PERMANENTLY RESIDENT IN"**

Q. Who is affected by the change?

A. The change in procedure applies to members of the administrative and technical and service staffs at embassies as well as consular employees and members of the service staff of consular posts. The new procedures do not affect diplomats, consular officers, or A-2 visa holders working at establishments other than embassies or consulates.

Q. When does the change take effect? Could there be a waiver of implementation for persons currently working at the embassies and consulates?

A. The change became effective on June 15, 1991 for all persons registered with the Office of Protocol after that date. It will be implemented on January 1, 1992 for all persons registered with the Office of Protocol prior to June 15, 1991. Except as otherwise indicated, they will have until January 10, 1992 to return identification cards, tax exemption cards, drivers licenses, and vehicle license plates to the Department. There will be no waiver of implementation.

Q. Will persons currently registered at the embassies and consulates be entitled to receive "green cards?"

A. Persons affected by this change will not be entitled to receive "green cards" automatically. Persons wishing to apply for legal permanent resident status must contact the Immigration and Naturalization Service (INS) district office having jurisdiction over their place of residence. For persons living in Washington, D.C. or Virginia it is the INS district office in Arlington; for persons living in Maryland it is the INS district office in Baltimore.

Q. Will persons affected by this change be required to apply For "green cards?"

A. Persons affected by the change will not be required to apply For "green cards." They will be entitled to retain their A-2 visa status. New locally-engaged employees also will be entitled to receive A-2 visas. Family members of both groups will be entitled to retain or receive A-2 visas as well. The issuance and renewal of visas will be handled in the usual way. Dependents of A-2 visa holders will be entitled to request permission for employment in accordance with existing employment arrangements.

Q. What privileges and immunities will be surrendered?

A. The privileges and immunities which persons determined to be "permanently resident in" the United States will no longer enjoy pursuant to the Vienna conventions were set forth in the circular note dated April 10, 1991. In particular, they will not be entitled to any immunity from criminal, civil or administrative jurisdiction, either on or off the job, no matter what duties; they perform at an embassy or consulate unless they are entitled to immunities under a separate bilateral agreement.

Q. May persons affected by this change work outside the embassy or consulate in addition to their official duties?

A. Embassy and consular employees holding A-2 status who are determined to be "permanently resident in" the United States **may not** accept outside employment in addition to their positions.

Q. Must locally hired employees be repatriated?

A. The missions-will not be required to repatriate local hires or persons determined to be "permanently resident in" the United States. However, A-2 visa holders who resign, retire or otherwise terminate their employment must depart the United States or adjust their visa status.

Q. Are there differences in the application of the new status For employees of embassies and employees of consulates?

A. Under the Vienna Conventions on Diplomatic and Consular Relations,, the individuals affected by the Department's note, whether embassy or consular employees, enjoy privileges and immunities; only to the extent admitted by the receiving state. The Department is applying the same criteria to all such persons in determining whether they are to be considered permanently resident in the United States. The specific consequences of this change in status in particular situations are set forth in other sections of this note.

Q. What is the effect of the change in status with respect to actions taken before the effective date of the change?

A. The change in status will take effect on the date that has been specified by the Department. Whether and to what extent actions taken before the effective date may be affected by the privileges and immunities existing at that time will have to be addressed in the context of specific circumstances as the need may arise.

Q. Will this change also be applied to mission or staff employees at international organizations such as the UN, World Bank and IMF?

A. The Department has this issue under review.

IDENTIFICATION CARDS

Q. Who will receive identification documents?

A. Only persons who are entitled to some degree of immunity will be issued identification cards. Accordingly, persons determined to be "permanently resident in" the United States will not receive them unless they enjoy immunities under a separate bilateral agreement. Other means of identification will be necessary to gain access to the State Department, airports, etc.

Q. Will employment cards be issued to persons affected by this change?

A. **"Permanently resident in" A-2 visa holders will not need employment cards to work at embassies or consulates.**

DOCUMENTATION

Q. What documentation will be required for persons to continue to be entitled to privileges and immunities?

A. Affected persons will be considered "permanently resident in" the United States for the purposes of the Vienna Conventions **unless** the employing foreign state provides appropriate documentation to indicate that the sending State:

- (1) pays the cost of the employee's transportation to the United States from the employee's normal place of residence;
- (2) undertakes to transfer the employee and his or her immediate family out of the United States within a specific time frame consistent with the sending state's transfer policy; and
- (3) undertakes to pay the cost of the employee's transportation from the United States to the employee's normal place of residence or to the country of the employee's next assignment at the end of the employee's tour of duty in the United States.

Verification may be made by attaching a copy of the principal's: 1) contract, 2) travel orders, or 3) employment letter. In cases where these documents cannot be provided, the Department will accept a diplomatic note from the embassy in the format prescribed in the attached sample.

The Department reserves the right to request additional information where questions regarding a person's status are not completely addressed in a diplomatic note, where information set forth in the diplomatic note appears to be inconsistent with information provided on the registration forms, or where the Department's review otherwise raises questions about a person's status.

TAXES

Q. Will "permanently resident in" employees of embassies and consulates have to pay income tax (federal and state) on mission salaries?

A. Foreign government employees in the United States, including employees of embassies and consulates, will continue, on the basis of reciprocity, to benefit from federal income tax exemption of their official salaries, provided that they are not U.S. citizens or "green card" holders. As a predicate for the exemption, the Department of State must be able to certify to the Department of the Treasury that there is reciprocal tax exemption for United States Government employees in the foreign country. Embassies are invited to submit a certificate of reciprocity substantially identical to the form attached.

State income taxation is a matter of the law of each of the several states. In those states that grant tax exemptions identical to federal law, "permanently resident in" employees of embassies and consulates who receive federal tax exemption on their salaries will also enjoy state tax exemption on their salaries.

Q. Do "green card" holders benefit from tax exemption on their mission salaries?

A. "Green card" holders will continue to be treated as "permanently resident in" the United States under the Vienna Conventions, as they have been in the past. "Green card" holders may be required to file federal and state income tax returns and pay tax on their mission salaries as those individuals are required to execute the waiver provided for in Section 247(b) of the Immigration and Nationality Act.

Q. For those employees who owe income tax on their mission salaries, will the embassy or consulate be required to withhold income tax? Will the staff be considered self-employed?

A. Consistent with the Vienna Diplomatic and Consular Conventions, foreign governments are expressly exempt under U.S. statutes from withholding income taxes from the paychecks of employees in a taxable status (such as U.S. citizens). For purposes of U.S. income taxes, except where a bilateral agreement applies otherwise, any employee of a foreign government in the United States who is in a taxable status is responsible for his or her own tax. The obligation to report income and make tax payments rests exclusively on the individual.

Q. What about U.S. source income other than official salary?

A. Embassy and consular employees, whether or not they are "permanently resident in" the United States under the Vienna Conventions, may be required to file federal income tax returns and pay U.S. tax if they have U.S. source income other than mission salary.

Q. Will double taxation agreements and bilateral consular conventions be honored?

A. Double taxation treaties, bilateral consular conventions and other relevant United States treaties remain applicable in accordance with their terms.

Q. Will taxes be imposed on pensions?

A. Under the Vienna Conventions, as noted above, private income having its source in the receiving state is taxable for all mission members, whether or not they are permanently resident. Thus, U.S. source income, including any pensions and investments in the United States, may be taxable.

Q. What tax deductions and tax rates would apply to "permanently resident in" employees of embassies and consulates? Is joint filing by a U.S. citizen and "permanently resident in" employee permitted? Please provide contact telephone numbers.

A. For information regarding particular tax rates, deductions, filing requirements, and income tax forms, individuals are advised to call the Internal Revenue Service (Taxpayers Service Division International) at 202-287-4301.

Q. Are U.S. dual nationals required to pay income tax?

A. Yes. U.S. dual nationals, like other U.S. nationals, remain fully subject to U.S. income tax requirements, with very limited exceptions. Dual U.S. - Philippine nationals are advised to consult the provisions of Internal Revenue Code, section 893, regarding their mission salaries.

Q. Will sales tax privileges be retained?

A. Unless privileges are granted to foreign government employees under state law, or on the basis of an existing bilateral agreement, sales tax privileges will not be retained.

Q. Will there be taxes on cars?

A. Yes, unless state law or an existing bilateral agreement provides exemption. There is a tax in the District of Columbia, Virginia, Maryland and most other states or jurisdictions applied at the time of registration of a vehicle. The percentage varies from state to state. Virginia is 3%; District of Columbia is 6-7%; Maryland is 5%.

Q. Will "permanently resident in" employees of embassies and consulates have to pay back taxes on newly purchased cars?

A. With respect to motor vehicles, a tax is applied **at the time of registration** and titling. The "permanently resident in" employees will have to pay the tax on the value of the vehicle at the time it is registered in a state. In addition, "permanently resident in" employees also would be responsible for the payment of any applicable personal property taxes assessed on vehicles, boats, etc.

SOCIAL SECURITY

Q. Who must pay social security tax?

A. Employees of embassies and consulates in the United States Are not required to pay social security taxes and are in fact precluded by law from participating in the social security system, unless they are U.S. citizens.

Q. Are "green card" holders required to pay social security taxes and eligible to receive social security benefits?

A. No, they are not required to pay social security taxes (and cannot voluntarily pay these taxes or earn the social security credits needed to qualify for benefits) through their employment at an embassy or consulate.

Q. Are embassies and consulates required to withhold social security taxes or pay the employer contribution to social security with respect to employees in a taxable status (U.S. citizens)?

A. No. Consistent with the Vienna Diplomatic and Consular Conventions, embassies and consulates are expressly exempt under U.S. statutes from withholding social security taxes from paychecks or from paying the employer contribution to the social security system. A U.S citizen is required to report earnings from employment at a foreign embassy or consulate as self-employment income and must pay social security taxes on the net earnings from this self-employment.

VEHICLES

Q. Will cars not conforming to U.S. technical and pollution standards that have been shipped into the United States by "permanently resident in" employees be required to undergo technical inspection or will they still be allowed to keep their non-conforming specifications?

A. Unless otherwise indicated by the Department, all vehicles will have to meet the various requirements of the individual states of the United States, including for example, inspection. Vehicles which do not meet U.S. specifications (safety and emission standards) would not meet individual state requirements nor would the Office of Foreign Missions issue clear titles for such vehicles. These vehicles must be exported, sold within the diplomatic community, or converted to U.S. and state specifications.

Q. What procedures are necessary to export a non-conforming vehicle?

A. An application must be made to the office of Foreign missions for a title to export only (using form DSP-102 ***Application for Title***).

Q. How will the Departments of Motor Vehicles of individual states be able to distinguish between A-2 visa holders with immunities and privileges and those persons with A-2 visas classified as "permanently resident in" the United States, and who will issue drivers' licenses, plates and registrations?

A. The Departments of Motor Vehicles of individual states will Not be able to make the distinction. The Office of Foreign Missions, Diplomatic Motor Vehicle Office (OFM/DMVO), will provide letters to all affected individuals who have vehicles registered by the DMVO authorizing the individual states to register the vehicles, issue plates and re-license. Individuals will be issued titles (in exchange for their Department of State license plates) in their names and with these they will be able to register their vehicles in the states without problems. With respect to **NEW** employees who will be classified as "permanently resident in" the United States, DMVO will provide written authorization for these individuals if necessary.

Q. Will it be possible to park with regular plates in reserved diplomatic areas or have access to the State Department without being ticketed?

A. Only vehicles bearing Department of State issued "D" license plates may park in restricted or reserved parking places.

Q. Will a driver's test be required?

A. Each state (jurisdiction) will make its own determination. Some jurisdictions will issue licenses in exchange for State Department licenses while others will not issue licenses without testing.

Q. How will the State Department facilitate the conversion of drivers' licenses and license plates from federal to local? Will there be a simple exchange? Will there be on site issuance at the embassies?

A. As described above, unless otherwise indicated, OFM/DMVO will provide letters to all individuals who are presently licensed by DMVO, authorizing the Departments of Motor Vehicles of individual states to re-license. Individuals who are "converted" to this new status and who have vehicles registered by the DMVO will be issued titles (in exchange for their Department of State license plates) and with these they will be able to register the vehicles in the states without problems. There will be no simple exchange, nor will on site issuance at an embassy be available. No grace period will be extended beyond the general deadline set by the Department of State for the return of credentials, January 10, 1992.

Q. Will the persons determined to be "permanently resident in" The U.S. be free to change insurance coverage?

A. Unless otherwise indicated, persons determined to be "permanently resident in" the United States will no longer be registering their vehicles with the Department. In the case of such persons who are permitted to register their vehicles locally, the requirement of a minimum limit for motor vehicle insurance is satisfied if the individual maintains insurance in an amount which meets the requirements of the jurisdiction in which the vehicle is registered.

The Embassy of _____ presents its compliments to the Department of State and with reference to the Department's notes dated April 10 and May 28, 1991 certifies that:

1. _____ is (a member of the foreign service) (employed by the department of foreign affairs) and has been assigned to the (Embassy of _____) (Consulate General/Consulate of _____) to (replace _____) (accept a new position).

2. The Government of _____ covered the cost of _____'s transportation to the United States; he/she and his/her immediate family will be transferred out of the United States within a specific time frame in accordance with the Government's transfer policy; and the employee will be returned home or transferred to the next assignment at government, expense at the end of the tour of duty in the United States.

The Embassy _____ of presents its compliments to the Department of State and with reference to the Department's notes dated April 10 and May 28, 1991, requests exemption from federal income taxation under 26 U.S.C. 893 with respect to compensation for official services rendered by employees of the diplomatic mission (and consular posts) of _____ who are not citizens of the United States. The Embassy certifies that the Government of _____ grants an equivalent exemption to employees of the Government of the United States performing similar services in _____.